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**IN THE
COURT OF APPEALS OF INDIANA**

CRAIG HARDIMAN,)	
)	
Appellant-Petitioner,)	
)	
vs.)	No. 26A05-0510-PC-616
)	
STATE OF INDIANA,)	
)	
Appellee-Respondent.)	

APPEAL FROM THE GIBSON CIRCUIT COURT
The Honorable J. Douglas Knight, Special Judge
Cause No. 26C01-0406-PC-1

October 15, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

The Gibson Circuit Court summarily denied Craig Hardiman's ("Hardiman") petition for post-conviction relief. Hardiman appeals and argues that the court was required to hold an evidentiary hearing on his petition. We disagree and affirm.

Facts and Procedural History

In 2003, Hardiman was convicted of various drug offenses in Gibson Circuit Court. Hardiman subsequently filed a petition for post-conviction relief. On October 4, 2004, the court ordered Hardiman to "file all affidavits, depositions, oral testimony or other evidence he wishes to be considered prior to judgment being entered by the court" before the close of business on January 4, 2005. See Appellant's App.¹

Shortly thereafter, Hardiman filed a motion for change of judge and his request was granted. On February 14, 2005, Judge J. Douglas Knight filed his acceptance of appointment as special judge. On March 28, 2005, the court ordered that the cause "shall proceed by submission upon affidavit" pursuant to Post-Conviction Rule 1(9)(b). Id. Hardiman was ordered to submit "in affidavit or other appropriate form, all submissions and materials which [he] desire[d] the Court to consider in support of the pending Petition for Post-Conviction Relief" within sixty days of the date of the order.

On June 9, 2005, Hardiman filed an affidavit in support of his petition in which he asserted that his trial counsel was ineffective because counsel "failed to file a motion to suppress the evidence discovered in the warrantless search of the vehicle, because the warrantless search of the vehicle while the petitioner was already under arrest required a search warrant which Officer Hurt did not obtain." Id. In addition, he stated, "counsel [] failed to challenge the prosecution when they amended the charging information after the

¹ Hardiman did not number the pages of his Appendix as required by Indiana Appellate Rule 51(C).

petitioner's omnibus date." Id. Hardiman also filed a memorandum of law in support of his petition.

The State then filed a motion for summary disposition alleging that there were no genuine issues of material fact. On July 5, 2005, the trial court granted the State's motion and ordered the cause "dismissed pursuant to" Post-Conviction Rule 1(4)(g).² Id. Hardiman now appeals.

Discussion and Decision

Hardiman argues that his petition for post-conviction relief, alleging ineffective assistance of counsel, presents a genuine issue of material fact, and therefore, the post-conviction court abused its discretion when it failed to hold an evidentiary hearing.

In this case, the post-conviction court elected to proceed under Indiana Post-Conviction Rule 1(9)(b) (2007), which provides in pertinent part:

In the event the petitioner elects to proceed pro se, the court at its discretion may order the cause submitted upon affidavit. It need not order the personal presence of the petitioner unless his presence is required for a full and fair determination of the issues raised at an evidentiary hearing. If the pro se petitioner requests issuance of subpoenas for witnesses at an evidentiary hearing, the petitioner shall specifically state by affidavit the reason the witness' testimony is required and the substance of the witness' expected testimony. If the court finds the witness' testimony would be relevant and probative, the court shall order that the subpoena be issued. If the court finds the proposed witness' testimony is not relevant and probative, it shall enter a finding on the record and refuse to issue the subpoena.

² Both the State and the post-conviction court refer to the State's motion as a motion to dismiss. However, because both the State and the court reference Post-Conviction Rule 1(4)(g), we will treat the State's motion as one for summary disposition. In addition, we observe that the trial court failed to issue "special findings of fact and conclusion of law on all issues presented" as required by Post-Conviction Rule 1(6). Given our resolution of this appeal, we conclude that the trial court's lack of specific findings of fact or conclusions of law is harmless error in this case. See Stephenson v. State, 864 N.E.2d 1022, 1051 (Ind. 2007).

“[T]he decision whether to hold an evidentiary hearing for a ‘full and fair determination of the issues raised,’ like the decision to proceed by affidavit, is best left to the [post-conviction] court’s discretion.” Smith v. State, 822 N.E.2d 193, 201 (Ind. Ct. App. 2005), trans. denied. The purpose of Rule 1(9)(b) “is to allow for more flexibility in both the presentation of evidence and the review of post-conviction claims where the petitioner proceeds pro se.” Id.

Because the post-conviction court ordered the parties to proceed by affidavit under Rule 1(9)(b), Post-Conviction Rule 1(4)(g) has no bearing on the court’s decision of whether to hold an evidentiary hearing. See id. Accordingly, Hardiman’s reliance on Evolga v. State, 722 N.E.2d 370 (Ind. Ct. App. 2000), is misplaced.

Hardiman submitted his own affidavit in support of his claim of ineffective assistance of counsel but did not submit any affidavits from any other witness that might have supported his claim. Moreover, after the special judge issued his order directing the parties to proceed under Rule 1(9)(b), if Hardiman believed that trial counsel would have supported his claim,³ he could have, but failed to, submit his trial counsel’s affidavit or request that trial counsel be subpoenaed.⁴ Hardiman therefore has not demonstrated how an evidentiary hearing would have aided him. For all of these reasons, the post-conviction court acted well within its discretion when it determined that an evidentiary hearing in this cause was not required.

³ In his Appellant’s brief, Hardiman states, “trial counsel would have testified that he was ineffective then he would have went on to explain how he was ineffective.” Br. of Appellant at 6.

⁴ Prior to his motion for change of judge, Hardiman’s request for subpoenas, including a subpoena for trial counsel, was denied. However, nothing prevented Hardiman from renewing his request to subpoena trial counsel after the special judge ordered the parties to proceed under Post-Conviction Rule 1(9)(b).

Affirmed.

NAJAM, J., and BRADFORD, J., concur.